IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2474 OF 2004

Rajan Mohanlal Thakur ... Applicant

versus

The State of Maharashtra ... Respondent

...

Mr. Aslam Shaikh, for the Applicant amicus curiae.

Mr. K.V. Saste, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

22nd December 2004

P.C.:

01. Heard Counsel for the parties. This application is through jail. The Applicant prays that sentences imposed on him in relation to two separate cases being Sessions Case No. 291/1998 arising out of offence registered with Azad Maidan Police Station and another Sessions Case No. 327/1998 arising out of offence registered with Byculla Police Station, which have ended in

conviction, be directed to run concurrently. In both these cases, the Applicant has been directed to suffer imprisonment for a period of seven years each. As those orders are allowed to become final, the Applicant will have to undergo rigorous imprisonment for a total period of 14 years in jail. He has already undergone 7 years of imprisonment. Besides, his conduct in jail has been certified as "very good". On the above basis, it is argued that to meet the ends of justice, this Court may direct that sentences in both the cases should run concurrently, in which case, the Applicant will have to be released having already undergone the required punishment.

02. Learned A.P.P., on the other hand, has drawn my attention to the decision of the Apex Court reported in A.I.R. 1988 S.C. 2143 in Mohd. A Hussain v. Asstt. Collector, Customs (Prevention) Ahmedabad and the Division Bench decision of this Court reported in 1994 Mh.L.J. 825 in Ramesh Krishna Sawant v. State of Maharashtra. The Division Bench has followed the exposition of the Apex Court in the case of Mohd. A. Hussain (supra). In that case, the Apex

Court has observed as follows :

> "The basic rule of thumb over the years has been the so called single transaction rule or concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different." (emphasis supplied)

. The later principle will govern the case on hand. In other words, as both the offences committed by the Applicant were independent and not arising from one transaction as such, the Applicant ought to suffer consecutive sentences and not concurrent. However, Mr. Saste, learned A.P.P., has in all fairness drawn my attention to a recent decision of the Apex Court in the case of Ammavasai and another v. Inspector of Police, Valliyanur and others, reported in (2000) 9 S.C.C. 749. In that case, the Apex Court has adopted a via media having regard to the fact situation of that case. In that case, the concerned accused was convicted in five different cases, the occurrences in all of which had taken

place at different points of time. Even in that case the accused was convicted for offence under section 395 of the Indian Penal Code, as in the present case. The lower Court had sentenced the accused to undergo rigorous imprisonment for a period of 7 years in each case. As a result, the accused in that case would have been required to undergo imprisonment for a total period of 35 years in jail, which also, according to the Apex Court, would be inappropriate. In that situation, the Apex Court directed that sentence in respect of first offence will run untelescoped by any other setnence imposed upon the accused subsequently and insofar as remaining four out of five cases are concerned, the sentences shall run concurrently. In other words, the accused in that case was directed to undergo imprisonment for a total period of 14 years in respect of the convictions and sentences ordered against him in five different cases arising from different occurrences, so as to meet the ends of justice.

03. In the present case, the Applicant has been convicted in two different cases for offence under section 395 of the Indian Penal Code and

would be required to undergo imprisonment for a total period of 14 years. Although the period of 14 years' imprisonment for two independent offences under section 395 of the Indian Penal Code committed successively cannot be said to be unacceptable, however, having regard to the peculiar fact situation of the present case, that the conduct of the Applicant has been reported to be very good by the jail authorities, coupled with the fact that the Applicant has not questioned the conviction and sentence imposed by the Court below in appeal; applying the approach adopted by the Apex Court in the case of Ammavasai (supra), to my mind, ends of justice would be met if the sentence imposed on the Applicant in respect of the second case is directed to run telescoped for a limited period of four years along with the sentence in relation to the first case, so that the Applicant will undergo imprisonment for a total period of 10 years. In other words, it will have to be assumed that the sentence in respect of the second case has already commenced in part along with the sentence in the first case, which will run concurrently for a period of 4 years only;

And the remaining period of thre years' sentence in relation to the second case will commence on completion of seven years' sentence in the first case. The net effect is that the Applicant will suffer imprisonment for a total period of 10 (Ten) years in respect of two convictions recorded against him, that will be sufficient to meet the ends of justice.

04. Accordingly, this application succeeds only to the above extent. Application disposed of on the above terms.

05. The Court records word of appreciation for the Counsel appearing for the Applicant as amicus curiae, as well as for the fairness of the learned A.P.P.

. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR,J.)